

Edmund Pendleton Gaines to Andrew Jackson, March 6, 1815, from Correspondence of Andrew Jackson. Edited by John Spencer Bassett.

BRIGADIER-GENERAL EDMUND P. GAINES TO JACKSON.

New Orleans, March 6, 1815.

General, I had the honor to receive your note of this date, and in compliance with your request, submit to you the result of my reflections upon the subject of your note.

1st. Any citizen of the united states may be tried by a court martial for the offences designated in the 56 and 57th article of the rules and articles of war, and the latter is probably applicable to the case now pending, inasmuch as the accused may be charged with "giving information directly or indirectly to the enemy." It is as follows:

" *Whosoever* shall be convicted of holding correspondence with, or giving intelligence to the enemy, either directly or indirectly shall suffer death, or such other punishment as shall be ordered by the sentence of a Court Martial."

2nd. The law limits the powers of courts martial in cases of mutiny, sedition etc. exclusively to persons "belonging to or serving with the army;" and contains no provision whatever authorising them to try citizens, not followers of the army. (see 7th and 8th section of the rules and articles of war).

That the Commanding Officer has a right to chalk out the proper limits of his camp, in time of war; to enforce obedience within those limits; and to confine any and every disorderly person found therein, there can be no doubt. He is held responsible for the defence of the place, and the good order and discipline of the forces under his command. Hence

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the right to enforce obedience, and to confine disorderly persons not of the army a right, if not expressly given by the national legislature, is so strongly implied, as to leave no ground to doubt of its existence. It has been established by universal custom, and may be considered as one of the clearest rules of the *common law of the army*. It is matter of regret that the power to *try* and *punish* such persons, under present circumstances, does not also exist. But the tribunal constituted by law to *try* and *punish*, are precluded from the authority of this *common law*—they are sworn to “try and determine the matter between the united states and the accused according to the provisions of “an act establishing rules and articles for the government of the armies of the united states” etc. The national legislature always regardful of the civil rights of citizens and habitually opposed to the growth of military power; have restricted the jurisdiction of courts martial, as regards our own citizens, to persons belonging to or serving with the army, excepting only the offences embraced in the 56th and 57th articles, as above mentioned. The offences here designated are such as demand the most prompt and exemplary punishment. The offence of mutiny or sedition is likewise of a very high grade, and in many cases calls for capital punishment: but the seditious citizen is supposed to be within our camp, where he can be confined, or from whence he may be sent to the civil authority, in the interior of the state, where he may be tried and punished. It will but seldom happen that the mutiny or sedition of a citizen, not in service, or having little opportunity of mixing with the troops, can amount to an offence so enormous, as that of “relieving the enemy” or corresponding with him.

The court, or a majority of the court may, however, think differently with me upon this case; nor indeed am I so much wedded to my own opinions as not to lay them aside whenever I find others better supported by reason. I hold myself ready therefore, to attend the court.

I have the honor to be